

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY TION Y CABADDU, ACCUSED-APPELLANT. PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY TION Y CABADDU, ACCUSED-APPELLANT.

G.R. No. 172092. December 16, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

Accused-appellant Joey Tion y Cabaddu seeks before us his acquittal through the reversal of the September 15, 2005 Decision[1] and January 2, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00212. The CA affirmed the judgment in Criminal Case No. 08-1163 of the Regional Trial Court (RTC), Branch 8 in Aparri, Cagayan, convicting Joey of violation of Section 4, Article II of Republic Act No. (RA) 6425, as amended.

The Facts

An Information[3] dated August 18, 1999 charged accused-appellant Joey, Ronald Diaz y Gario, and Allan Letan y Diaz with violation of Sec. 4, Art. II of RA 6425, as amended. The Information reads:

That on or about March 4, 1999, in the Municipality of Aparri, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, being private individuals, conspiring together and helping each other, did then and there willfully, unlawfully and feloniously sell, distribute and/or deliver 5.2 kilos of marijuana, a prohibited drug, to operatives of the Philippine National Police Force stationed at Aparri, Cagayan, the said accused knowing fully well and aware that it is prohibited for any person to sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug unless authorized by law.

CONTRARY TO LAW.

Upon arraignment on November 9, 1999, Joey, Ronald, and Allan, assisted by counsel, uniformly entered a plea of "not guilty." During pre-trial, the defense admitted the identity of the three accused, the arrest of the accused on March 4, 1999, and the existence of Physical Science Report No. D-53-99 on the dried leaves suspected to be marijuana issued by the Provincial Crime Laboratory Office, Regional Command 02 in Ilagan, Isabela.

The Prosecution's Version of Facts

To bolster its case against the three accused, the prosecution presented the testimonies of arresting police officers Police Superintendent (P/Supt.) Feliciano Caranguian and Police Inspector (P/Insp.) Marlo Castillo, and Police Senior Inspector (P/SInsp.) Previ Fabros Luis of the Provincial Crime Laboratory Office in Ilagan, Isabela.

During the period pertinent to the incident, P/Supt. Caranguian and P/Insp. Castillo were both assigned in Aparri, Cagayan, with the former as Chief of Police.

On March 2, 1999, P/Supt. Caranguian directed P/Insp. Castillo, along with a police informant, to conduct a test buy operation in Agusi, Camalaniugan, Cagayan to verify the information that marijuana was being sold there. On that day, the police informant initially bought PhP 100 worth of marijuana from drug pushers in the locality.

On March 3, 1999, P/Supt. Caranguian instructed P/Insp. Castillo to do the test buy himself by having the police informant introduce him to the drug pushers. Forthwith, P/Insp. Castillo and two police informants proceeded to the horno[4] in Agusi, Camalaniugan, where the latter introduced the undercover policeman as a student. As a result, P/Insp. Castillo was able to buy PhP 100 worth of marijuana sticks from the drug pushers. On his initiative, P/Insp. Castillo negotiated to buy a bigger quantity of five kilos of marijuana the following day. The drug pushers agreed and set the price at PhP 2,500 per kilo or a total of PhP 12,500 for five kilos.

Apprised about the deal, P/Supt. Caranguian sought the help of then Municipal Mayor Ismael Tumaru of Aparri, who gave PhP 6,250 for the down payment. The bills, after they were photocopied and authenticated by Clerk of Court Rogelio M. Calanoga, were given to P/Insp. Castillo.

On March 4, 1999, P/Insp. Castillo and the two police informants went at around 10:00 a.m. to the horno in Agusi, Camalaniugan to consummate the sale. The drug pushers, however, told the undercover policeman that they could not make the delivery since they did not have money to source the five kilos of marijuana. P/Insp. Castillo used the PhP 6,250 "marked money" he had to pay the drug pushers half the contracted price, with the agreement that the balance would be paid upon delivery of the marijuana.

Later, at around 5:00 p.m. of the same day, Joey, Allan, and Ronald, aboard a motorbike driven by the latter, arrived and parked beside the waiting shed at the designated place of delivery in front of the Aparri District Hospital in Toran, Aparri. Joey, upon alighting from the motorbike, handed to poseur-buyer P/Insp. Castillo the black bag he was carrying, which, when opened by the latter, contained bricks of marijuana. Upon giving the pre-arranged signal of removing his cap, the other undercover policemen—P/Supt. Caranguian, P/Insp. Castillo, Senior Police Officer 3 (SPO3) Efren Fariñas, SPO2 Ricardo Napao, Police Officer 2 (PO2) Raymundo Carbonel, and PO2 Revelito Jove—arrested Joey, Allan, and Ronald.

The accused were brought to the police station where they were searched. A stick of marijuana was taken from one of the accused, while the search of Joey produced three 100 peso bills, which corresponded to the "marked money" earlier photocopied and authenticated by Clerk of Court Calanoga. The bills were marked "ELF" by SPO2 Elpidio L. Florendo, the police investigator. The bricks of suspected marijuana contained in the bag opened earlier weighed around 5.2 kilos. The confiscation receipt was signed by the arresting policemen.

The bricks of suspected marijuana were sent to the Provincial Crime Laboratory Office in Ilagan, Isabela for examination. P/SInsp. Luis, the forensic chemist who conducted the examination, submitted Physical Science Report No. D-53-99 which attested that the dried leaves were indeed marijuana.

Version of the Defense

For its part, the defense presented the testimonies of Joey, Ronald, Allan, and one Carlito Diaz.

Ronald testified that Joey and Allan merely rented his motorbike for PhP 250. He drove Joey and Allan to Ballesteros, Cagayan at about 12:30 p.m. on March 4, 1999. Upon reaching the place at around 2:30 p.m., they parked at the beach. Joey and Allan then left Ronald for about half an hour. Upon their return, Joey was bringing a bag. They then proceeded to Toran, Aparri, Cagayan and he was instructed by Joey to stop in front of the Aparri District Hospital, where moments later they were arrested.

Carlito Diaz testified that Joey was his classmate while Allan is his nephew. They belonged to the same team in the inter-barangay summer basketball tournament. They practiced in the morning of March 4, 1999, and

afterwards, as their routine, they went to the hornio along the river to rest and take a bath. There, he noticed a man (P/Insp. Castillo) and two teenagers (police informants) talking to Joey. Eventually, the man handed Joey an envelope.

Allan narrated that he is a friend of Joey and plays basketball with him. While at the hornio by the riverbank, a man (P/Insp. Castillo) and two teenagers (police informants) called for Joey. They talked for a while, then the man handed an envelope to Joey. Later, Joey told Allan that they would hire the motorbike of Ronald. They first went to a house in Ballesteros town where Joey talked to a person who handed him a black bag some minutes later. Then they went to Camalaniugan and stopped at a waiting shed there. Since nobody was there, Joey instructed Ronald to proceed to Toran, Aparri. Upon reaching the Aparri District Hospital, Joey told Ronald to stop. He heard P/Insp. Castillo ask Joey, "Do you have it?" to which Joey responded, "Yes, I have." Joey then gave the bag to P/Insp. Castillo who opened it. Thereafter, they were arrested.

Accused-appellant Joey raised the primary defense of instigation. He testified that there was no test buy conducted beforehand. On March 4, 1999, while he was resting with some friends at the hornio in Camalaniugan beside the Cagayan River after a basketball game practice, a man (P/Insp. Castillo) and two teenagers (police informants) approached his group and inquired where they could buy marijuana cigarettes. When a friend pointed to Joey, the man approached him and introduced himself as a student of the Lyceum of Aparri. He asked Joey if he could buy him five kilos of marijuana for a ready buyer in Manila. Joey told him that he could get it from Ballesteros, Cagayan for PhP 2,500 per kilo, but Joey said that he could not source it for he had no money. The man told Joey he could advance PhP 6,250, corresponding to half the total price, and pay the balance upon delivery of the goods. When Joey agreed, the man handed him the PhP 6,250.

Joey then asked Allan to accompany him to Ballesteros. Upon hiring Ronald and his motorbike, they immediately proceeded there after lunch to meet his supplier named Johnny Reyes. Johnny agreed with the arrangement and handed Joey the five kilos of marijuana in a black bag in exchange for PhP 6,250. From Ballesteros, they went first to the hornio but, finding no one there, they proceeded to the waiting shed in front of the hospital in Toran. Upon reaching the place, their contact man asked if Joey had the marijuana. Joey answered it was in the bag which he handed to the man. Then they were arrested. Joey asserted that he only had PhP 110 in his pocket at the time.

The very next day, Joey further narrated, P/Supt. Caranguian told him that if he would name his supplier and the place where they bought the marijuana, no charges would be filed against the three of them, Joey, Ronald, and Allan. Joey drew a sketch of the house of Johnny Reyes in Ballesteros. He believed that Johnny Reyes was arrested and insisted that they (the three accused) should not be charged because of the information they gave about Johnny Reyes pursuant to the deal with P/Supt. Caranguian.

The RTC Convicted Joey

On June 26, 2002, the RTC rendered a Decision,[5] convicting Joey of selling marijuana, but exonerating Allan and Ronald. The fallo reads:

WHEREFORE, the Court finds accused Ronald Diaz and Allan Letan NOT GUILTY of the crime charged and are hereby ACQUITTED for lack of evidence. However, the Court finds accused Joey Tion "GUILTY" beyond reasonable doubt of selling marijuana weighing 5.2 kilos - a prohibited drug in violation of Section 4, Article II of Republic Act No. 6425 as amended and is hereby sentence[d] to:

- suffer the penalty of Reclusion Perpetua; and
- pay the fine of Five Hundred Thousand (PhP 500,000) Pesos.

SO ORDERED.

Aggrieved, Joey filed a motion for new trial dated July 15, 2002, which was opposed by the prosecution. Joey then filed a reply, omnibus motion for inhibition, cancellation, and re-raffling dated October 14, 2002, praying for the inhibition of the trial court judge who rendered the above decision. On November 18, 2002, Judge Manaus inhibited.

Eventually, on May 27, 2003, Joey's motion for a new trial was denied. Joey filed a motion for reconsideration but was denied through an Order^[6] dated July 8, 2003.

On July 30, 2003, this case was appealed directly to this Court due to the imposition of reclusion perpetua, docketed as G.R. No. 160462. But in conformity with *People v. Mateo*,^[7] we transferred this case to the CA on October 11, 2004^[8] for intermediate review.

The CA Affirmed Joey's Conviction

As stated at the outset, the appellate court, in the assailed decision dated September 15, 2005, affirmed that of the trial court, thus:

WHEREFORE, premises considered, the Decision dated 26 June 2002, which was promulgated on 02 July 2002, of the Regional Trial Court of Aparri, Cagayan, Branch 08 in Crim. Case No. 08-1163 finding the accused-appellant JOEY TION y CABADDU guilty beyond reasonable doubt for violation of Section 4, Article II of Republic Act No. 6425, as amended by Republic Act No. 7659, and sentencing him to suffer the penalty of reclusion perpetua and to pay the fine of PhP 500,000 is hereby AFFIRMED.

SO ORDERED.^[9]

Joey's motion for reconsideration was rejected through the equally assailed CA resolution dated January 2, 2006.

The Issues

Undaunted, Joey is now with this Court via the present appeal raising essentially the same assignment of errors he raised in G.R. No. 160462, as follows:

- 1) Joey is instigated and induced upon, i.e., there was no valid buy-bust operation;
- 2) The submission of the Philippine Cannavissativa or Marijuana is barred by prescription;
- 3) Joey is prematurely made to suffer the imprisonment imposed;
- 4) Joey's innocence is declared by the trial court in its decision; and,
- 5) Joey's constitutional presumption of innocence is uncontroverted.

The foregoing assignment of errors can be synthesized into: first, the core issue of whether there was a valid buy-bust operation; and second, whether Joey is guilty beyond reasonable doubt of selling marijuana.

The People of the Philippines, represented by the Office of the Solicitor General (OSG), chose not to file any supplemental brief confining its position and arguments in the earlier filed Brief for the Appellee, while accused-appellant Joey filed a supplemental^[10] to his appellant's brief.

The Court's Ruling

We deny the appeal.

A close perusal of the records of the case and the clear and unanimous findings of the courts a quo compel this Court to affirm Joey's conviction.

First Core Issue: Valid Buy-Bust Operation

Joey strongly argues that he was instigated and induced to buy marijuana by P/Insp. Castillo. He maintains that he was merely an errand boy to buy five kilos of marijuana from Johnny Reyes with the money (PhP 6,250) provided by the mayor of Aparri through P/Insp. Castillo. Without that money, Joey contends, he could not have procured the marijuana. He, thus, asserts that he is neither the seller, for that would be Johnny Reyes, nor the buyer, for that would be the mayor of Aparri through P/Insp. Castillo. As a mere errand boy or a middle man at best, Joey avers that he was clearly instigated and induced to procure five kilos of marijuana with the money provided for by P/Insp. Castillo, and there was really no buy-bust operation.

We are not persuaded.

A buy-bust operation is a form of entrapment legally employed by peace officers as an effective way of apprehending drug dealers in the act of committing an offense. Such police operation has judicial sanction as long as it is carried out with due respect to constitutional and legal safeguards.[11] There is no rigid or textbook method in conducting buy-bust operations.[12]

As aptly quoted by the appellate court, *People v. Doria* provides the "objective" test in scrutinizing buy-bust operations in this wise:

We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[13]

Prescinding from the above test or guidelines, we find no error in the courts a quo's findings and disposition of the instant case.

Prosecution Testimonies More Credible

First, the testimonies of P/Supt. Caranguian and P/Insp. Castillo are very clear and coherent. The details pertaining to the test buys on March 2 and 3, 1999 were clear: The police informant bought marijuana on March 2, while P/Insp. Castillo was able to buy marijuana on March 3 after being introduced to Joey and Allan by two police informants. The deal for the purchase of five kilos of marijuana was agreed upon on March 3, 1999. The "marked money" was then prepared with the help of then Mayor Tumaru and Clerk of Court Calanoga who photocopied and authenticated it. In the morning of March 4, 1999, P/Insp. Castillo, with the two police informants, confirmed the purchase of the five kilos and paid half the price with the PhP 6,250 "marked money." And upon delivery by Joey of the 5.2 kilograms bricks of marijuana in the agreed place at 5:00 p.m. on March 4, 1999, he was arrested along with Allan and Ronald. Confiscated from Joey were the bricks of marijuana and three PhP 100 bills, which were among those from the PhP 6,250 "marked money" earlier paid to him by P/Insp. Castillo.

The testimony of P/Insp. Castillo[14] was corroborated on material points by P/Supt. Caranguian,[15] who was

part of the buy-bust team that apprehended Joey, Allan, and Ronald on March 4, 1999.

There Was Neither Instigation nor Inducement

Second, there is no showing that Joey was merely prevailed upon to buy marijuana in behalf of P/Insp. Castillo. The fact that two test buys were made on March 2 and 3, 1999 shows that Joey was involved in selling marijuana. Moreover, the testimonies of defense witnesses Allan Letan[16] and Carlito Diaz[17] tend to show that poseur-buyer P/Insp. Castillo and the two teenagers (police informants) with him had indeed met Joey before March 4, 1999. Allan testified that P/Insp. Castillo called for Joey. This belies Joey's testimony that he met poseur-buyer P/Insp. Castillo for the first time in the morning of March 4, 1999, for how could P/Insp. Castillo call him if they had not met earlier?

Carlito Diaz likewise testified to the fact that P/Insp. Castillo talked to Joey. P/Insp. Castillo was already familiar to Joey. Besides, the fact that P/Insp. Castillo called for Joey that morning of March 4, 1999 at the horno in Agusi, Camalaniugan shows that they had already met before. This gives credence to P/Insp. Castillo's testimony that, indeed, positive test buys were made the previous two days, with him meeting Joey and Allan face-to-face on March 3, 1999.

Joey, in his testimony, denied selling marijuana. Yet, when asked to provide for a large quantity of marijuana, he agreed to deliver five kilos of it at the price of PhP 2,500 per kilo. The fact that Joey agreed to deliver five kilos of marijuana shows that he believed poseur-buyer P/Insp. Castillo, whom he had met earlier during the March 3, 1999 test buy, to be truly a student of the Lyceum in Aparri and nothing more. In fact, Joey delivered 5.2 kilos of marijuana to him in the afternoon of March 4, 1999, after receiving PhP 6,250 or half of the agreed price in the morning of the same day. Thus, we agree with the trial court's finding that Joey would not have readily agreed and admitted to poseur-buyer P/Insp. Castillo that he can sell large quantities of marijuana if he (Joey) is not selling marijuana and did not know how to source the illegal drug. The fact is, as can be gleaned from the sale of five kilos of marijuana, Joey stands to profit from such a sale. It is, thus, clear to us that the mens rea came from Joey, who was neither instigated nor induced.

Where the criminal intent originates in the mind of the accused and the criminal offense is completed, the fact that a person, acting as a decoy for the state, or that public officials furnished the accused an opportunity for the commission of the offense, or that the accused is aided in the commission of the crime in order to secure the evidence necessary to prosecute him, there is permissible entrapment and the accused must be convicted. What the law forbids is the inducing of another to violate the law, the "seduction" of an otherwise innocent person into a criminal career. In instigation, the instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal, while in entrapment, the peace officer resorts to ways and means to trap and capture the lawbreaker in the execution of the latter's criminal plan.[18]

Besides, we will not be remiss to point out that, in many cases, drug pushers sell their prohibited articles to prospective customers, be they strangers or not, in private as well as in public places, even in daytime.[19] What matters is not the existing familiarity between the buyer and the seller, or the time and venue of the sale, but the fact of agreement as well as the act constituting the sale and delivery of prohibited drugs.[20]

Joey's contention that he gave the whole amount of PhP 6,250 to one Johnny Reyes is beyond belief. He rented the motorbike of Ronald for PhP 250, and it is incredulous, to say the least, that he would spend PhP 250 out of his own pocket just to procure marijuana for the mayor through P/Insp. Castillo, as he maintains. And this fact is belied by the confiscation of three PhP 100 bills which formed part of the "marked money" previously photocopied and authenticated by Clerk of Court Calanoga, and duly presented as evidence during trial. The three bills were presented in court as prosecution Exhibits "A" to "C."[21]

Therefore, we sustain the trial court's finding that Joey's pose that he was instigated by P/Insp. Castillo is without factual and legal basis. The mode of detection and arrest resorted to was entrapment that is perfectly legal.

No Ill Motive from the Buy-Bust Team

Third, there is likewise no showing that the police officers framed up Joey. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the buy-bust operation deserve full faith and credit.[22] Settled is the rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties.[23] The records do not show any allegation of improper motive on the part of the buy-bust team. Thus, the presumption of regularity in the performance of duties of the police officers must be upheld.

Second Core Issue: Act of Selling Marijuana

Proved Beyond Reasonable Doubt

As to the pivotal issue of whether accused-appellant Joey is guilty of selling marijuana, we answer in the affirmative.

In a prosecution for illegal sale of dangerous drugs, the following must be proved: (1) that the transaction took place; (2) that the corpus delicti or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[24] With respect to illegal sale of marijuana, its essential elements are: (1) identity of the buyer and the seller, the object of the sale, and the consideration; and (2) delivery of the thing sold and the payment.[25]

The foregoing elements were duly proved during the trial. Thus, we agree with the appellate court's affirmance of the trial court's finding that Joey is guilty beyond reasonable doubt of selling marijuana.

There can be no dispute that Joey delivered 5.2 kilos of marijuana to poseur-buyer P/Insp. Castillo on March 4, 1999 at around 5:00 p.m. There is likewise no dispute that P/Insp. Castillo paid PhP 6,250 to Joey in the morning of March 4, 1999. Thus, the identities of Joey and poseur-buyer P/Insp. Castillo are certain.

In fact, by foisting the defense of instigation and through his own testimony, Joey admitted[26] delivering 5.2 kilos of marijuana to poseur-buyer P/Insp. Castillo in the late afternoon of March 4, 1999. He likewise admitted and testified to receiving PhP 6,250 payment of half the contract price for five kilos of marijuana from poseur-buyer P/Insp. Castillo. This fact of receiving payment is corroborated by defense witnesses Allan Letan and Carlito Diaz who saw Joey receive an envelope from P/Insp. Castillo in the morning of March 4, 1999.

The identities of Joey, as seller, and P/Insp. Castillo, as poseur-buyer, are, thus, certain. The fact of the payment of PhP 6,250 was proved and admitted by Joey. The delivery of 5.2 kilos of marijuana by Joey to poseur-buyer P/Insp. Castillo was likewise proved and admitted by Joey. With these certainties, it is clear that Joey was caught in flagrante delicto of selling marijuana to poseur-buyer P/Insp. Castillo. The well-entrenched principle is that the accused commits the crime of illegal sale of drugs as soon as he consummates the sale transaction whether payment precedes or follows delivery of the drugs sold.[27]

Despite the admission of Joey in his testimony that he delivered the marijuana, the prosecution is nonetheless tasked to prove the existence, and presentation in court, of the confiscated marijuana, the corpus delicti and object of the illegal sale. One with the courts a quo, we hold that the prosecution has sufficiently carried the burden of proving this beyond reasonable doubt.

The confiscated bricks of marijuana were photographed in front of the three accused in the police station, and duly issued a confiscation receipt. The specimens were duly passed on to the Provincial Crime Laboratory Office, Regional Command 02 in Ilagan, Isabela, covered by a letter-request dated April 8, 1999 for laboratory testing and confirmation of the suspected marijuana. The laboratory tests on the specimens were conducted by forensic chemist P/SInsp. Luis of the Provincial Crime Laboratory Office, who issued Physical Science Report No. D-53-99 confirming the specimens to be marijuana. During her testimony[28] on March 20, 2001, P/SInsp. Luis also presented in court the bricks of marijuana, the object of the illegal sale.

Hence, the integrity of the custody of the specimens composed of bricks of marijuana has not been broken from the police station to the Provincial Crime Laboratory Office until their presentation in court during the trial. The bricks of marijuana were presented as prosecution Exhibits "G" to "L." [29] The confiscation receipt issued by the arresting officers and signed by the accused was presented as prosecution Exhibit "M," [30] and the letter-request for the laboratory tests of the specimens as prosecution Exhibit "N," [31] while Physical Science Report No. D-53-99 is prosecution Exhibit "O." [32]

Joey contends that the presentation of the bricks of marijuana is barred by prescription and in violation of Sec. 21(2) and (3) of RA 9165 [33] that requires the submission and examination of the specimens within 24 hours from confiscation, and the examination report under oath by the one who conducted the examination, also issued within 24 hours after receipt of the specimens.

Joey's contention is specious at best. For one, the confiscation of the marijuana on March 4, 1999 and its examination and presentation in open court during the testimony of P/SInsp. Luis on March 20, 2001 were made way before the passage of RA 9165 in 2002. For another, the principle that whatever is favorable to the accused must be applied retroactively does not obtain in this instance, for its applicability is primarily on the substantive aspect. The procedure followed in the custody and examination of suspected dangerous drug specimens before the passage of RA 9165 and before the creation of the Philippine Drug Enforcement Agency cannot be put aside by the mere operation of the later law. As aptly put by the appellate court:

The appellant is actually invoking the provisions of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002). Said law was enacted only on 07 June 2002. It was on 04 March 1999 that the appellant was caught violating Section 4, Article II of R.A. No. 6425, as amended by R.A. No. 7659 and was charged accordingly. Hence, the police officers cannot be faulted for alleged non-observance of a law (R.A. No. 9165) that was not yet in existence. [34]

Moreover, the prosecution, at the end of presentation of its evidence, filed its Formal Offer of Documentary Evidence on August 13, 2001, way before the passage of RA 9165.

Anent Joey's assertion that the three PhP 100 bills were planted, suffice it to say that the presentation of "marked money" is not essential in the prosecution of the crime of selling dangerous drugs. The marked money used in the buy-bust operation is not indispensable in drug cases; it is merely corroborative evidence. [35] Neither law nor jurisprudence requires the presentation of any of the money used in a "buy-bust" operation. [36] Besides, payment of consideration is immaterial in the distribution of illicit drugs. [37]

In a futile effort to extricate himself, Joey posits that the Philippine Cannavissativa or marijuana is not a prohibited drug under RA 6425, as amended. The appellate court aptly brushed his position aside by citing Sec. 2(e) [38] and (i) [39] of RA 6425, as amended, which clearly and categorically classified Philippine Cannavissativa or marijuana as a prohibited drug being a derivative of the plant *cannabis sativa* L., otherwise known as "Indian hemp."

With the foregoing disquisition, it is beyond any quibble of doubt that accused-appellant Joey is, indeed, guilty of

violation of Sec. 4, Art. II of RA 6425, as amended.

Finally, with respect to the penalty, Sec. 4, Art. II, in relation to Sec. 20, of RA 6425, as amended by RA 7659, provides:

Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as broker in any such transactions.

x x x x

Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. - The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

x x x x

5.750 grams or more of Indian hemp or marijuana;

x x x x

8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose. (Emphasis supplied.)

On the basis of the above provisions of law, the penalty imposed by the courts a quo upon Joey, which is reclusion perpetua, is proper, considering that the marijuana confiscated in this case as a result of the buy-bust operation weighs more than 750 grams, i.e., 5.2 kilograms. The penalty of death cannot be imposed anymore due to its abolition under RA 9346.

In the same vein, the fine of PhP 500,000 imposed by the courts a quo on accused-appellant Joey is also in order, as this fine is the minimum of the range of fines imposable on any person who sells prohibited drugs without any authority as clearly provided in Sec. 4, Art. II of RA 6425, as amended.

The stiff penalties that the crime of dealing with illegal drugs carry stemmed no doubt from the reality that this menace has destroyed the lives of many members of our society. It has brought so much pain and suffering not only to its victims but also to their families. Many drug users are, in fact, even induced to commit criminal acts in order to sustain their vice.

For this reason, the government is exerting all efforts to put an end to the trade on prohibited drugs, down to the street level. This will come to naught if its perpetrators will be allowed to get off the hook, so to speak, by imputing ill motives or some other consideration on the part of police officers who are simply doing their best to curtail their illegal activities.

WHEREFORE, the appeal of accused-appellant Joey Tion y Cabaddu is hereby DENIED. Accordingly, the CA's September 15, 2005 Decision and January 2, 2006 Resolution in CA-G.R. CR-H.C. No. 00212 are AFFIRMED IN TOTO. Costs against accused-appellant.

SO ORDERED.

Corona, (Chairperson), Peralta, Del Castillo[*], and Villarama, Jr.[**], JJ. concur.

[*] Additional member per Special Order No. 805 dated December 4, 2009.

[**] Additional member per Special Order No. 802 dated November 12, 2009.

[1] Rollo, pp. 3-56. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin (now a member of this Court).

[2] CA rollo, pp. 271-273.

[3] Id. at 6.

[4] It is a place made of bricks, like a low tower, beside the Cagayan river and not far off from the highway located in Agusi, Camalaniugan.

[5] CA rollo, pp. 28-63. Penned by Presiding Judge Conrado F. Manauis.

[6] Id. at 64.

[7] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[8] CA rollo, p. 185.

[9] Rollo, p. 54.

[10] Id. at 65-73, dated October 11, 2006.

[11] People v. Dulay, G.R. No. 150624, February 24, 2004, 423 SCRA 652, 662; citing People v. Chua, G.R. No. 133789, August 23, 2001, 363 SCRA 562, 583.

[12] People v. Ahmad, G.R. No. 148048, January 15, 2004, 419 SCRA 677, 694; citing People v. Hajili, G.R. Nos. 149872-73, March 14, 2003, 399 SCRA 288.

[13] G.R. No. 125299, January 22, 1999, 301 SCRA 668, 698-699.

[14] TSN, June 18, 2001, pp. 4-15. P/Insp. Castillo testified:

Prosecutor Cortes: You said that you conducted a test buy operation on March 2, 1999, who conducted this test buy operation?

P/Insp. Castillo: On March 2, 1999 we let our asset conduct the text buy operation, sir.

Q:

Who instructed this asset to conduct a test buy operation?

x x x x

A:

The Chief of Police then directed the asset to conduct a test buy, sir.

x x x x

Q:

Having made that report to your Chief of Police what did your Chief of Police do?

A:

He instructed me the following day, March 3 to conduct again a test buy, sir, and introduced me that I'll be the

one to transact to them.

Q:

So this time you will act as the buyer?

A:

Yes, sir.

Q:

And did you comply with the instruction of your Chief of Police?

A:

Yes, sir.

Q:

What then did you do?

A:

So together with the asset, sir, we proceeded again to the area and then the asset introduced me to the suspects and I pretended as a student.

Q:

In what way did you pretend yourself as a student?

A:

At that time, sir, I was a fresh graduate and I had a high hair cut then as if I am really a student and I was slim.

x x x x

Q:

Where did this transaction take place?

A:

In Agusi, sir, particularly at the Horno.

Q:

Is this along the highway?

A:

It is near, sir. It is like a tower made of bricks.

Q:

And you were introduced by your asset to how many suspected pushers?

A:

There were five (5), sir.

Q:

And after you were introduced by your asset to these suspected pushers of marijuana what happened next?

A:

I was able to buy again, sir.

Q:

You were able to buy what?

A:

Marijuana, sir.

x x x x

Q:

And after this deal what happened next?

A:

We agreed to have a bigger deal, sir.

Q:

What do you mean by bigger deal?

A:

A big deal, sir.

Q:

And did you agree on what date would these five (5) men were supposed to deliver to you this bigger quantity of marijuana?

A:

The following day, sir, March 4.

Q:

Now what did you do after concluding this test buy on March 3, 1999?

A:

I made a feed back to our Chief of Police Caranguian, sir.

x x x x

Q:

So the following day, March 4, 1999, what did you do?

A:

The Chief of Police then instructed me to go and confirm if the deal is already there at more or less 10:30 in the morning, sir.

Q:

And what did you find out?

A:

I found out that the marijuana was not there because the pushers told me that they have no money to buy, sir.

x x x x

Q:

And when they requested money from you what did you do?

A:

As per agreement with our Chief of Police, he said that if there will be transaction, we shoot to the deal as I had with me the marked money, sir.

Q:

Why were you in possession of the marked money?

A:

That was our agreement on March 3 when I gave feed back to our Chief of Police Caranguian that if they shoot the deal I will give them the marked money, sir.

x x x x

Q:

So five (5) kilos was worth Twelve Thousand Five Hundred Pesos (P12,500.00)?

A:

Yes, sir.

Q:

And you gave half of this to the three suspected pushers?

A:

Yes, sir.

Q:

Upon giving the amount what did these three (3) men do?

A:

We have finally agreed that the complete stuff of marijuana and the remaining balance of the money will be given at the waiting shed in front of the Aparri District Hospital at Toran, Aparri, Cagayan, sir.

x x x x

Q:

And how long did you stay at the waiting shed of the Aparri District Hospital?

A:

At past 12:00 o'clock noon, sir, I was already there and they only arrived at 5:00 o'clock in the afternoon.

Q:

After almost five (5) hours of waiting?

A:

Yes, sir.

Q:

And who arrived?

A:

Three (3) suspected pushers on board a motorcycle, sir.

Q:

These were the same three (3) persons with whom you concluded earlier a deal regarding the selling of marijuana?

A:

Two of those on board the motorcycle were the ones whom I really had a transaction, sir.

Q:

Did you come to know who were these two persons?

A:

One is Joey Tion alias Boy Hapon and the other one is Allan, sir.

Q:

What is the surname of this Allan?

A:

Letan, sir.

Q:

Who was driving the motorcycle then that arrived at the place where you were waiting?

A:

That person who [drove] the motorcycle was not present during the first transaction, sir.

Q:

But the two others were present?

A:

Yes, sir.

x x x x

Q:

Now you mentioned the name Joey Tion alias Boy Hapon, is he in court?

A:

Yes, sir.

Q:

Kindly point at him.

Mr. Bialba: The witness is pointing to a man whom he identified as Joey Tion and when asked his name he gave his name as Joey Tion.

x x x x

Q:

How about Allan Letan, is he in court?

A:

Yes, sir.

x x x x

Q:

What about the driver of the motorcycle the man whom you cannot anymore recall, is he in court?

A:

Yes, sir.

x x x x

Q:

That was your first time to see Ronald Diaz?

A:

Yes, sir, when we already gave half of the amount.

Q:

Now, when these three (3) men on board a motorcycle arrived what happened?

A:

They showed to me the bag and after confirming that it was marijuana I signaled my companions by removing my hat and after they came and frisked them, sir.

Q:

The pre-arranged signal was the removing of your hat?

A:

Yes, sir.

[15] TSN, December 15, 1999, pp. 7-18.

[16] TSN, April 22, 2002 and May 23, 2002.

[17] TSN, January 29, 2002.

[18] *People v. Jocson*, G.R. No. 169875, December 18, 2007, 540 SCRA 585, 592-593; citing *People v. Doria*, *supra* note 13.

[19] *People v. Wu Tuan Yuan*, G.R. No. 150663, February 5, 2004, 422 SCRA 182, 191; citing *People v. Elamparo*, G.R. No. 121572, March 31, 2000, 329 SCRA 404, 412.

[20] *Id.*; citing *People v. Macuto*, G.R. No. 80112, August 25, 1989, 176 SCRA 762, 768.

[21] Records, Formal Offer of Documentary Evidence dated August 13, 2001, Vol. I, pp. 244-248.

[22] *People v. Domingcil*, G.R. No. 140679, January 14, 2004, 419 SCRA 291, 303; citing *People v. Remerata*, G.R. No. 147230, April 29, 2003, 401 SCRA 753, 757.

[23] *People v. Jocson*, *supra* note 18, at 591; citing *People v. Dulay*, *supra* note 11, at 660.

[24] *People v. Santos, Jr.*, G.R. No. 175593, October 17, 2007, 536 SCRA 489, 501; *People v. Nazareno*, G.R. No. 174771, September 11, 2007, 532 SCRA 631, 636; *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570, 579.

[25] *Buenaventura v. People*, G.R. No. 171578, August 8, 2007, 529 SCRA 500, 510; citing *People v. Razul*, G.R. No. 146470, November 22, 2002, 392 SCRA 553, 560.

[26] TSN, October 23, 2001.

[27] *People v. Li Yin Chu*, G.R. No. 143793, February 17, 2004, 423 SCRA 158, 170; citing *People v. Aspiras*, G.R. Nos. 138382-84, February 12, 2002, 376 SCRA 546, 555-556.

[28] TSN, March 20, 2001.

[29] Records, Formal Offer of Documentary Evidence, *supra* note 21.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) x x x x

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided,

That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.

[34] Rollo, pp. 52-53.

[35] *People v. Domingcil*, supra note 22, at 305; citing *People v. Cueno*, G.R. No. 128277, November 16, 1998, 298 SCRA 621, 631-632.

[36] *People v. Yang*, G.R. No. 148077, February 16, 2004, 423 SCRA 82, 93; citing *People v. Astudillo*, G.R. No. 140088, November 13, 2002, 391 SCRA 536, 555.

[37] *Id.*; citing *People v. Rodriguez*, G.R. No. 144399, March 20, 2002, 379 SCRA 607, 620.

[38] (e) "Dangerous Drugs" -- refers to either:

1. "Prohibited drug" which includes opium and its active components and derivatives, such as heroin and morphine; coca leaf and its derivatives, principally cocaine; alpha and beta eucaine, hallucinogenic drugs, such as mescaline, lysergic acid diethylamide (LSD) and other substances producing similar effects; Indian hemp and its derivatives; all preparations made from any of the foregoing; and other drugs and chemical preparations, whether natural or synthetic, with the physiological effects of a narcotic or a hallucinogenic drug. (As amended by B.P. Blg. 179, March 12, 1982.)

[39] (i) "Indian hemp" -- otherwise known as "Marijuana", embraces every kind, class, genus or specie of the plant *cannabis sativa* L., including *cannabis Americana*, hashish, bhang, guaza, churrus and ganjab, and embraces every kind, class and character thereof, whether dried or fresh and flowering or fruiting tops or any parts or portions of the plant, seeds thereof, and all its geographic varieties, whether as a reefer, resin, extract tincture or in any form whatsoever. (As amended by P.D. No. 1708 and B.P. Blg. 179, March 2, 1982.)

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